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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.3.2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.97 of 2003
(Appeal No.88 of 2003)

Commissioner of Income Tax
Chennai VIII .. Appellant

Vs.

C.S.Kothari
Chennai. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 28.1.2003 in I.T.A.No.1974/Mds/1993 for the assessment year 1991-92 against the order of the Commissioner of Income Tax (Appeals)VIII Madras 34 dated 29.3.93 and made in IT/GT/Appeal No.487/92-93/SR IX against the order of the Deputy Commissioner of Income Tax Special Range IX, Madras -34, dated 9.1.92 and passed in PAN 714-K for the Assessment year 1991-92.

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by
P.P.S.JANARTHANA RAJA, J.)

This Appeal is by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The above appeal came up for hearing before this Court on 20.10.2003 and this Court admitted the appeal and formulated the following substantial questions of law:

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" 1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that interest paid u/s. 234B & 234C forms part of the tax paid to be deducted to arrive at the taxable income ?
2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the question whether interest u/s.234B & 234C forms part of the tax is a debatable issue, and cannot be adjusted in proceedings u/s. 143(1)(a) ? "

2. The facts relating to the above questions of law are as under:-

The assessment year involved is 1991-92 and the corresponding accounting year ended on 31.03.1991. The assessee is an individual and his main income is the share of income from M/s.Basic Engineers and Traders, Chennai. For the said assessment year, the assessee furnished his return of income on 30.10.91 declaring an income of Rs.64,11,050/-. The assessment was completed under Section 143(1)(a) of the Act vide intimation dated 09.01.1992, wherein the total income was determined at Rs.65,18,034/- instead of Rs.64,11,050/-. In the Adjustment Explanatory Sheet annexed to the intimation referred supra, the share income of the assessee was taken at Rs.65,49,099/- as against the declared share income of Rs.65,18,034/-. Aggrieved by the variation in income, the assessee, vide letter dated 01.09.1992 requested rectification of the assessment under Section 154(1)(b) of the Act. The Assessing Officer, by letter dated 21.09.1992 pointed out that the variation in income was due to the correct share of income from the firm of M/s.Basic Engineers, Madras being adopted and there was no mistake apparent from the records which required rectification. While arriving at the correct share of income, the Assessing Officer had excluded a sum of Rs.2,13,972/- being interest payable under Sections 234A, 234B and 234C of the Act from the total tax payable by the firm for determining apportionable profit among the partners.

3. Aggrieved by that order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved by the same, the assessee filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal allowed the appeal filed by the assessee and set aside the order of the Assessing Officer issued under Section 143(1)(a) to the extent of not adding interest under Sections 234A, 234B and 234C to the tax portion of the firm for determining apportionable profit among the partners.

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4. The learned Senior Standing Counsel appearing for the Revenue submitted that the Assessing Officer was right in not adding interest payable under Sections 234A, 234B and 234C to the tax portion of the firm for determining apportionable profit among the partners. The counsel also relied on the Supreme Court judgment reported in 42 ITR 57 in the case of Bhor Industries Ltd. Vs. C.I.T. Though notice has been served on the respondent/ assessee, there is no representation on behalf of the assessee.

5. We heard the learned Standing Counsel appearing for the Revenue. Section 143 of the Income Tax Act deals with the procedure for assessment of income of the relevant assessment year. When the return was filed, Section 143(1) contemplates acceptance of the return as it is with apparent adjustment required to be made on the basis of information contained in the return itself, without requiring the presence of the assessee or production by him of any evidence in support of the return. It is not a form of regular assessment after enquiring into the correctness of the return filed and verified by the assessee. It is a summary act on the basis of undisputed material furnished by the assessee, without factually disputing its correctness. Under Section 143(3), regular assessment takes place after giving opportunity to the assessee to enable him to produce the evidence and support return.

6. In this case, the return of income was processed under Section 143(1)(a) of the Act, and the same reads as follows:-

> "143. Assessment. - (1) (a) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142,-
> (i) if any tax or interets is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and
> (ii) if any refund is due on the basis of such return, it shall be granted to the assessee:
> Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss declared in the

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return, namely:-

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;

(ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed;

(iii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed;

....."

7. A perusal of the above, clearly indicates that in making the adjustment of total income of the assessee, the Assessing Officer is entitled to make the adjustment of the income or loss declared in the return. The adjustments permissible have been enumerated in the above Clauses (i), (ii) and (iii) of the first proviso to Section 143(1)(a) of the Act. Clause (i) deals with correction of arithmetical errors. Clause (ii) relates to grant of relief to the assessee, which is found due, but not claimed in the return. Clause (iii) deals with disallowance of claims of brought forward loss, deduction, allowance or any other reliefs claimed in the return which are prima facie inadmissible. No authority has been conferred on the Assessing Officer to make any adjustment by way of excluding a sum of Rs.2,13,972/- being interest payable under Sections 234A, 234B and 234C of the Act, from the total tax payable by the firm for determining the apportionable profit among the partners. Hence, the Assessing Officer has clearly transgressed his authority under Section 143(1) in excluding a sum being interest payable under Sections 234A, 234B and 234C, from the total tax payable by the firm, without notice to the assessee and without taking recourse to the regular assessment proceedings. Excluding the interest by the Assessing Officer from the total tax payable by the firm is not a matter enumerated in the list of adjustments that could be made without requiring the presence of the assessee. The Assessing Officer was of the opinion that the assessee claimed certain benefit to which he is not entitled to, then it is for him to initiate appropriate proceedings to assess the assessee instead of making adjustment in the manner which he has done. In this case, the Tribunal considered the scope of Section 143(1)(a) and held as follows:

"On consideration of the material made available

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> before the Tribunal and analysing the same in the light of the arguments advanced by the assessee, we find that the return of the assessee was processed under Section 143(1)(a) of the Income Tax Act which says that only prima facie adjustments to be made. As was observed by the Commissioner in his impugned order it is clear that whether the interest on income tax is to be treated as tax is a debatable question which cannot be considered under Section 143(1)(a). Therefore, considering this aspect in 143(1)(a) proceedings is not at all tenable under law. If at all the department is of the view that the interest on income tax should not be taken as tax it has to give an opportunity of being heard to the assessee as per principles of natural justice which are to be followed by the Revenue. But on perusal of the impugned order as well as the assessment order, we find that such an opportunity was not given to the assessee. Therefore, we are of the considered view that this is not an issue to be taken up under Section 143(1)(a). Such a view taken by the Assessing Officer under Section 143(1)(a) proceeding is to be set aside. Similarly the order of the Commissioner (A) upholding such an order also requires to be set aside. Accordingly we hereby set aside the order of the Assessing Officer issued under Section 143(1)(a) to the extent of not adding interest under Section 234A, 234B & 234C to the tax portion of the firm for determining apportionable profit among the partners."

8.From the above reasoning of the Tribunal, it is clear that the Tribunal considered the scope of Section 143(1)(a) and correctly come to the conclusion that the Assessing Officer is wrong in excluding a sum of Rs.2,13,972/- being interest payable under Sections 234A, 234B and 234C of the Act from the total tax payable by the firm for determining apportionable profit among the partners. The determination of the said question would have been made by the Assessing Officer only under Section 143(2) of the Act and not under Section 143(1)(a). It may be true that after exhausting the procedure prescribed under Section 143(2) of the Act, the consequence may be the same. We have also gone through the judgment relied on by the Standing Counsel for the Revenue as cited supra, and it has no relevance to the facts of the present case. In the

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present case, the issue involved is whether the Assessing Officer can make the adjustments under Section 143(1)(a), or not, especially when the same is a debatable one. We are of the view that the Tribunal correctly set aside the order of the Assessing Officer issued under Section 143(1)(a) to the extent of not adding interest under Sections 234A, 234B and 234C of the tax portion of the firm for determining the apportionable profit among the partners.

9. In view of the foregoing reasons, we find there is no error or infirmity in the order of the Income-tax Appellate Tribunal and the same does not require interference. Hence we answer the questions in favour of the assessee and against the Revenue. Accordingly, we dismiss the tax case. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

km/sra

To

1.The Assistant Registrar,Income Tax Appellate Tribunal
III Floor, Rajaji Bhavan, Besant Nagar, Chennai -90.

2.The Commissioner of Income Tax (Appeals) VIII, Chennai-34.

3.The Deputy Commissioner of Income Tax, Special Range IX, Chennai-34.

4.The Commissioner of Income Tax-VIII, Chennai.

+1cc to M/s.Pushya Sitaraman, Advocate Sr 13746

VC (CO)
km/18.4.

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